

MR. & MRS. JOHN N. TUMMINELLO : BEFORE THE
507 Murdock Road : ZONING COMMISSIONER
Petition for Non-Conforming :
Use : OF BALTIMORE COUNTY
Case No.: 92-211-SPH

PROTESTANT'S MEMORANDUM OF LAW IN OPPOSITION TO
PETITION FOR NON-CONFORMING USE

Anneslie Community, Inc., protestant, by its attorney
Gerard P. Uehlinger, opposes the Petition for Non-Conforming
Use of Mr. & Mrs. John N. Tumminello, 507 Murdock Road. The
facts and the law do not permit these homeowners to abandon
the use of their property for ten years as a two-family
dwelling and then claim a special exception.

FACTS

The overriding and undisputed fact which should defeat
the Petition for Non-Conforming Use is that for ten years
(from approximately 1981 to the present, and continuing) the
owners did not rent the upper floor of 507 Murdock Road. The
improvement was a single-family residence for that entire
period. Indeed, in testimony one of the owners admitted they
used the upper floor on at least one occasion during the 10
years to house relatives.

Protestants would also point out that there is no
evidence before the Zoning Commissioner that the owners have

either a) priced the cost of an internal stairway or other
carpentry alteration to render the house a marketable single-
family unit, or b) considered a small reduction in price of
their home so as to reflect conversion costs.

But the one fact that makes this case simple, and which
therefore elicited a 10 page memorandum from the other side in
hopes of destroying years of well-considered precedent, is the
abandonment and discontinued use of 507 Murdock Road as a two-
family dwelling for ten years.

LEGAL ARGUMENT

The law in this case is simple to apply. The owners are
applying for a non-conforming use special exception, due to
the obvious fact that no real estate agent will touch the
property with a ten foot pole if it is proposed to be
advertised as a legal two-family residence.

As this Commission has noted many times, the burden of
proving a non-conforming use is on the claimant of the use.
Calhoun v. Board of Appeals of Baltimore County, 277 A.2d 589
(1971). The legal issue presented by 507 Murdock is not
unique. As recently as April, 1990, the issue before
Commissioner Nastorowicz was whether a rental use had been
abandoned or discontinued at 530 Windwood Road in Anneslie.

The Commissioner noted:

"As with all non-conforming use cases, the
first task is to determine what lawful non-
conforming use existed on the subject property
prior to January 2, 1945, the effective date
of the adoption of the Zoning Regulations and
the controlling date for the beginning of zoning.
It is not disputed that the dwelling when built
was a legal, two apartment dwelling.

The second principle to be applied, as
specified in Section 104.1, is whether or not there
has been a change in the use of the subject
property or any abandonment or discontinuance of
such nonconforming use for a period of one year
or more. In the event of abandonment or discontinuances
for one year or more, the nonconforming use is deemed
to have been lost.

After due consideration of the testimony and
evidence presented, there is insufficient evidence
to support that the use of the property as two
apartments has been continuous and without
interruption since its development in 1950. While
it is evident the subject property was constructed as
a two apartment dwelling, as of right, the testimony
presented regarding its continuous use as such was
inconsistent. The burden of proof is upon the
petitioner to present testimony and evidence which
clearly supports his position. In this instance, the
testimony and evidence presented by the Protestants
would indicate that there was a break in the use of
the property as two apartments for an extended period
of time, and as such, the nonconforming use of the
property ceased. Therefore, the relief requested in
the special hearing should be denied."

This case is identical, and should be decided in
identical fashion. The County Council could have used

language in Section 104.1 other than "abandonment" or
"discontinuance", (such as "reconversion"), but it did not.
If 10 years without a tenant is not abandonment or
discontinuance of that use, then what is?

The cases cited by Petitioners are not from Maryland, and
they are not applicable to Baltimore County, or to the
Anneslie area, where the law has been consistently applied
that a break without tenants of more than one year removes the
two family unit from the grandfather clause, and requires one-
family use from that point forward.

The Anneslie Community, with its narrow tree-lined
streets, has been steadfast in its determination to be a
single-family community. The Baltimore County zoning
ordinance establishes in no uncertain terms what it takes to
obtain an exception to single-family housing. The owners of
507 Murdock have been long-time residents, and we regret we
must oppose their plans. However, the law and these facts
require that you deny their Petition.

Respectfully submitted,

GERARD P. UEHLINGER
Suite 1631 Munsey Bldg.
7 N. Calvert Street
Baltimore, MD 21202-1940
410-539-0025
Attorney for Anneslie Community,
Inc.

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 22nd day of January, 1992,
a copy of the foregoing Protestant's Memorandum of Law in
Opposition to Non-Conforming Use Approval was mailed, postage
prepaid to:

Newton A. Williams, Esquire
Nolan, Plumhoff & Williams, CHTD.
700 Court Towers
210 W. Pennsylvania Avenue
Towson, MD 21204

and

Phyllis Friedman, Esquire
County Office Building
Towson, MD 21204

GERARD P. UEHLINGER

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MR. & MRS. JOHN H. TUMMINELLO* BEFORE THE
507 Murdock Road : ZONING COMMISSIONER
Towson, Maryland 21204 :
OF BALTIMORE COUNTY
Case No.: 92-211-SPH

PETITIONERS' MEMORANDUM
CONCERNING NON-CONFORMING USE

Mr. and Mrs. John H. Tumminello, Petitioners herein,
by Newton A. Williams and Nolan, Plumhoff & Williams,
Chartered, and Francis X. Borgerding and DiNenna & Breschi,
their attorneys, offer this Memorandum for the consideration of
the Zoning Commissioner.

STATEMENT OF THE CASE

This case, originally filed by the late S. Eric
DiNenna, involves a special hearing concerning the status of
507 Murdock Road, the Tumminello duplex, a two family
residence. The petition was filed in the fall of 1991, and was
the subject of a hearing before the Zoning Commissioner on
December 13, 1991. The parties were asked by the Commissioner
to submit Memoranda concerning their respective positions.

STATEMENT OF THE FACTS

All parties concerned, including Gerard P. Uehlinger,
Esquire, counsel for the Anneslie Association, concede the
basic facts of the matter.

According to the testimony, and to the agreed fact
situation, 507 Murdock Road is a two story duplex, built in

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approximately 1924 as a two family dwelling, one living unit
over the other, located on the south side of Murdock Road, east
of York Road in the Anneslie subdivision. The subject property
at 507 Murdock Road and the adjacent property to the west at
505 Murdock Road are the only two true duplexes in Anneslie.
Both built in the 1920's, and both maintained as duplexes to
this day. As such, this is not a case of a single family house
converted to a two family dwelling before 1955.

The structure, shown very clearly in Petitioners'
photograph Exhibit 2(b), has a front door on the right side
(west side) of the structure, which leads to the Tumminello
portion of the dwelling on the first floor. While the door on
the left (east side) leads to the upstairs dwelling. Both the
upstairs and downstairs are exact images of each other, as is
shown in the floor plan. (See Petitioners' Exhibit Number 3).

The basic configuration of the house is a two family
duplex before 1945, and before March of 1955. This fact was
conceded at the hearing, was also proven by the testimony of
Mrs. Jane Johnson of Maplewood Road and her sister, Mrs. Muriel
Buddemier of Murdock Road, both of whom grew up in the
neighborhood, and have continued to live in the neighborhood
until the present time.

It is conceded by all parties concerned that
approximately ten years ago, due to a very unpleasant
experience with a tenant, and due to the fragile health of the

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elderly Mr. and Mrs. Tumminello, who are up in years, that the
upper floor of 507 Murdock Road was no longer rented on a
continuous basis to tenants. However, the structure was not
changed in any way or reconvered from a duplex to a single
family dwelling or used in its entirety as a single family
dwelling. The testimony showed that the house has not been
converted into a single family dwelling, that the individual
staircases on each side remain, that the kitchen and all
facilities upstairs remain, and that the current configuration
of this duplex remains exactly as it was built in 1924.

QUESTION PRESENTED

WHAT IS THE LEGAL EFFECT OF A CONTINUATION OF A DUPLEX
CONFIGURATION OF A STRUCTURE IN A SINGLE FAMILY HOME ZONED
AREA, AS OPPOSED TO A FAILURE TO RENT THE UPPER FLOOR FOR
APPROXIMATELY TEN YEARS UNDER THE APPLICABLE BALTIMORE COUNTY
ZONING REGULATIONS?

DISCUSSION

The Petitioners contend that the basic, continuing two
family duplex nature of 507 Murdock Road is the important and
controlling nonconforming feature, and not whether or not it is
occupied, even if it is vacant for a period as long as ten
years.

During the December 13th hearing it was stated, and
the Commissioner can take notice of his own records to see that
from 1945 to 1955, that the Anneslie area was zoned Cottage A.
In the 1948 Regulations, (a copy of a portion of which was
furnished to the Commissioner, and which the Commissioner has

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available in his office), in the Cottage A zone, in Section III A.3., "dwelling, two family" is permitted as a matter of right.

Furthermore, in the definition section of the 1948 Regulations, "dwelling, two family" is defined as follows: "a detached dwelling arranged or used for occupancy by not more than two families as separate house keeping units, and with not more than one entrance on any side, such a dwelling shall have one house keeping unit over the other." See 1948 Regulations p.3. number 12. Thus, the basic duplex structure was legal when built, and was legal from 1945 to March of 1955, when the R-6 zone supplanted the Cottage A Zone in Anneslie.

It should be noted that the description of "dwelling, two family" is the exact configuration of the Tumminello residence. Namely, a duplex, one unit over the other, with a door on each side of the front of the house. This is not the case of a single family, two story house which was converted to two apartments at some time prior to 1955. This is the case of a duplex, which from 1924 to the present has been, is and remains precisely that, a duplex with separate entrances, separate kitchens, and it is not readily convertible to a single family structure due to this duplex design.

As the Commissioner is well aware, Section 104 of the Zoning Regulations relates to nonconforming uses. More specifically, Section 104.1, in pertinent part, provides as

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follows:

"A nonconforming use (as defined in Section 101) may continue except as otherwise specifically provided in these Regulations; provided that upon any change from such non-conforming use to any other use whatsoever, discontinuance of such nonconforming use for a period of one year or more, or in case any nonconforming business or manufacturing structure shall be damaged by fire or other casualty to the extent of seventy-five (75) per cent of its replacement cost at the time of such loss, the right to continue or resume such nonconforming use shall terminate."

Obviously, the key factor here is whether the failure to rent the duplex on one level for a ten year period constitutes abandonment or discontinuance, or rather, as we contend, that an abandonment or discontinuance can only be shown by some overt act such as the removal of the kitchen upstairs, the removal of the separate doorways, or some other actual change to the duplex structure itself, other than the mere failure to occupy both floors as a two family residence for a period of time.

To have an abandonment or discontinuance of a nonconforming use, two factors must be present in the fact pattern.

"Abandonment in law depends upon the concurrence of two and only two factors; one, an intention to abandon or relinquish; and two, some overt act, or some failure to act, which carries the implication that the owner neither claims nor retains any interest in the subject matter of the abandonment." 1 Anderson, American Law of Zoning, Section 6.60 (1966); Pock v. Baltimore County, 286 Md. 368 (1979); See

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also Vogl v. Mayor and City Council of Baltimore, 228 Md. 283(1961).

There are no cases in Maryland law discovered by our research which specifically pertain to multi-dwelling units as nonconforming uses in single family residential neighborhoods. The following cases, however, are identical to the Tumminello's situation, not only in factual pattern, but also share the issue of whether a nonconforming use has been abandoned or discontinued because of a failure to rent the premises or utilize the property by more than one family.

In Town of East Greenwich v. Day, 375 A.2d 953 (1977), the Court held that the occupancy by a single family of a nonconforming, two-family dwelling for a period of five years did not extinguish the building owner's vested right in the nonconforming use. The two-family dwelling had, for the past five years, been used by a previous owner who only occupied one-half of the house. The Court held that sufficient evidence could be found that the nonconforming use was not abandoned because the previous building owners took no steps to remove the fixtures and improvements appurtenant to a multi-family dwelling such as separate utility meters, separate kitchens, and separate bath facilities. This is exactly the situation in the Tumminello's case. Furthermore, the previous owners in Town of East Greenwich also obtained a reduction in their sewer assessment to single family use, however, the Court held that this overt act lacked probative value of intent to abandon the nonconforming use as a two family dwelling.

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Another case, Brown v. Gerhardt, 125 N.E. 2d 53 (Ill. 1955), also held that the absence of physical changes made to property indicated that no intent could be found to discontinue a nonconforming use for the reason of abandonment. In Brown, the Court was faced with an action for an injunction and declaratory relief against a city's enforcement of a single-family zoning restriction. The Court held that occupancy of a five-unit multiple family dwelling by a single family did not constitute an abandonment of the structure's pre-existing nonconforming use where the evidence showed that the reduction in occupancy was intended as only a temporary suspension. The Court found this evidence in the fact that no fixtures were removed to convert the building to single-family use, and that the owners had undertaken substantial remodeling and modernization to make the premises suitable for multiple occupancy. Further, the Court concluded that while a change in the use of a nonconforming structure may constitute an abandonment or discontinuance of such use, the circumstances of the present case do not constitute changes of such permanent nature as to establish such discontinuance or abandonment, notwithstanding that the aggregate single-family occupancy lasted eight years.

These cases are similar to the Tumminello's case in that the Tumminello's duplex is situated in an area zoned for single family homes, and has been used for a period of years for only one family. The Tumminellos have also never physically changed or reconverted their duplex into a single

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family home.

The Tumminello's never intended to change their duplex property for single family use. This can be evidenced by the fact that no overt act, such as removing the second floor entrance, kitchen, separate doors or stairs, or combining the utility meters, was even attempted. The lack of any overt act of intent is the necessary proof to show that the Tumminellos did not discontinue or abandon their nonconforming use of the property, ie. the basic duplex configuration of the structure.

Other cases concerning multiple dwelling units held to have lost their status as nonconforming uses may be distinguished from the Tumminello's case. In Parish of Jefferson v. Boyd, 192 So.2d873 (La. App. 4th Cir. 1966), a multi-family dwelling was held to no longer be considered a nonconforming use because the previous owner had removed the partition wall which had separated the downstairs apartment from the upstairs apartment in order to make one living unit. In yet another distinguishable Louisiana decision, Paillet v. New Orleans Department of Safety & Permits, 433 So.2d 1091 (La.App. 1983), the Court held that a nonconforming use to a multi-family dwelling was extinguished when the dwelling was no longer rented and the owner moved out of the building. Neither of these cases are analogous to the Tumminello's case because at no time have the Tumminellos attempted to physically alter the duplex residence so as to create a single family home, nor have they moved out of the residence thus completely abandoning any use of the property whatsoever.

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We respectfully submit that in the case of a structure clearly built as a two family duplex dwelling, the duplex aspect of the structure is the non-conforming use, not the occupancy which is a mere incident. Double occupancy is not key to the basic duplex configuration of the structure.

We would contend that a correct view of the situation would be that if the Tumminellos had converted the upstairs to their own use, taken out the stairways, substituted a common stairway from their own dwelling on the first floor, taken out the kitchen, or otherwise reconverted what has always been a duplex into a single family dwelling, then it could fairly be stated that this would constitute abandonment or discontinuance of the duplex configuration of the structure which is the key to the non-conforming aspect of it.

The nearby Anneslie residents have always looked at, walked by or otherwise considered the Tumminello duplex as just that, a duplex, and they are in no way harmed by the continuation and use of both units, which began in 1924, and which we trust will be allowed to continue by the Commissioner granting the relief requested.

Respectfully submitted,

Newton A. Williams
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Francis X. Borgerding
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D. Kenna and Breschi
DINENNA AND BRESCHI
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Towson, Maryland 21204
(410) 296-6820

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 15th day of January, 1992, a copy of the foregoing Petitioners' Memorandum Concerning Nonconforming Use was mailed postage prepaid to Gerard P. Uehlinger, Esquire, and Peoples Counsel, Phyllis Friedman, Esquire at County Office Building, Towson, Maryland 21204.

Newton A. Williams
NEWTON A. WILLIAMS

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IN RE: PETITION FOR SPECIAL HEARING	BEFORE THE
S/S Murdock Road, 175 ft. E	ZONING COMMISSIONER
of c/1 Locust Drive	OF BALTIMORE COUNTY
507 Murdock Road	
9th Election District	
4th Councilmanic District	CASE # 92-211-SPH
John H. Tumminello, et ux	
Petitioners	

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner as a Petition for Special Hearing seeking approval of a nonconforming use for two apartments at that property known as 507 Murdock Road, as more particularly described on Petitioners' Exhibit No. 1.

The Petitioners/property owners, John H. and Marion M. Tumminello, appeared and testified. They were represented by Newton A. Williams, Esquire and Francis X. Borgerding, Esquire. Also appearing in support of the Petition was Muriel E. Buddemeier, Jane E. Johnson, Bob Norrell and Mary Brock. Appearing in opposition to the Petition was Jim Dobson and Richard Katz. The Protestants were represented by Gerard Uehlinger, Esquire. Numerous exhibits, both in support and in opposition to the Petition, were offered. They include Petitioners' Exhibit No. 1, the site plan to accompany the Petition for Variance, as well as numerous deeds and photographs pertaining to the property.

The facts surrounding the case are clear and not in dispute. The property, known as 507 Murdock Road, is located in the Anneslie subdivision of Baltimore County. The subject lot is 6,250 sq. ft. in area and is zoned D.R.5.5. It is improved by a 2 story framed dwelling which has an attached screened deck on the back and a garage to the rear of the lot.

ORDER RECEIVED FOR FILING
Date 2/19/92
By *Mr. Smith*

Uncontradicted testimony offered was that the property was built in approximately 1924 as a two family dwelling, with one living unit over top of the other. This two family dwelling floor plan is a rare characteristic for houses in the subdivision, in that there is only one other dwelling which was built in this manner in Anneslie. The basic configuration of the house has remained unchanged since its construction, well before the adoption of zoning regulations in Baltimore County in 1945, or their comprehensive re-adoption in 1955. Thus, it is indeed true that the case comes before me not as an instance where a single family house was converted to a two family dwelling, but where the dwelling was constructed and used as a two family dwelling well before the adoption of the regulations.

As was also agreed, the dwelling was, in fact, used as a two family dwelling from the time of its construction until approximately ten years ago. At that time, due to the frail health of the owners, the upper floor of the premises was no longer rented. Since then, it has remained vacant, but for a rare occasion when the Petitioners' visiting family occupied the second floor during an extended visit. Further, it is clear that the Petitioners, themselves, reside only in the downstairs apartment and that the upstairs apartment is not being used.

The standard to legitimize a nonconforming use is set forth within Section 104 of the B.C.Z.R. Specifically, Section 104.1 provides:

"A nonconforming use (as defined in Section 101) may continue except as otherwise specifically provided in these regulations; provided that upon any change from such nonconforming use to any other use whatsoever, or any abandonment or discontinuance of such nonconforming use for a period of one year or more, the right to continue or resume such nonconforming use shall terminate."

It is clear that the nonconforming use presented in this case predates, by a substantial period, the adoption of the B.C.Z.R. in 1955 and the earliest

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er regulations in 1945. However, the use must bear scrutiny as to whether same has undergone any change, been abandoned or been discontinued for a period in excess of 1 year. Simply stated, the entire case turns on whether the Petitioners' failure to actively lease the upstairs apartment, over the past 10 years, invalidates the otherwise proper use.

Both sides have set forth their arguments on this issue in written memorandum. Both memorandums were well prepared and eloquently set forth the position offered by each side. In essence, the Petitioners note that the dwelling in and of itself remains in the exact configuration as when same was constructed in 1924, well before the adoption of the regulations. Further, the Petitioners note that there has been no intention to abandon the use, nor some overt act which carries the implication that the owners neither claim nor retain an interest in the use. The Petitioners cite both Maryland case law and decisions from appellate courts of other jurisdictions in support of their views.

As to the Protestants, they argue that the failure of the property owners to lease the upstairs apartment for a period of ten years severs the nonconforming use. The Protestants note that the burden of proving the nonconforming use is upon the Petitioners and also cite prior decisions of this office in support of their position. Although well presented, it should be noted that the decisions of prior Zoning Commissioners are not binding upon me, nor am I required to adopt them as they relate to the present case.

As is required in any case where a statute and/or regulation need be interpreted, the first task is to carefully examine the wording used by the legislature. See Falcone v. Palmer Ford, Inc., 219 A2d 808 242 Md. 4871 (1966) and State v. Fabritz, 348 A2d 275, 276 Md. 416 (1975). In this

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instance, it must be noted that the County Council designated three conditions within Section 104.1 of the B.C.Z.R. which would terminate an otherwise proper nonconforming use. They are: (1) whether there has been any change from the use to another use; or (2) whether said use has been abandoned; or (3) whether said use has been discontinued. Further, these three (3) tests, by use of the word "or", are presented in the disjunctive. Clearly, therefore, the Petitioners must prove that they have satisfied each test for this nonconforming use to continue.

As to the first test, the Petitioners have met their burden. The evidence is uncontradicted that there has been no change of the use and the structure. The property retains the same physical characteristics and floor plan as when built as a two family apartment. Further, the Petitioners continue to reside only in the downstairs unit and have not occupied the entire dwelling so as to change or convert same to a single family unit.

As to the second prong regarding abandonment, one need examine the applicable case law. The propriety of nonconforming uses and the abandonment of same was comprehensively addressed by the Court of Appeals in Landay v. Board of Zoning Appeals, et al., 173 Md. 460 (1938). This case arose out of Baltimore City and set forth the legal definition of the term "abandonment". This definition remains valid today. Within that case, the Court held that:

"Abandonment in law depends upon the concurrence of two, and only two, factors; one, an intention to abandon or relinquish; and two, some overt act or some failure to act, which carries the implication that the owner neither claims nor retains any interest in the subject matter of the abandonment." Landay, page 469-470.

This principal of law has been upheld numerous times by the Appellate Courts of this State. For example, in Canada's Tavern, Inc. v. Town of

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Glen Echo, 260 Md. 206 (1970), the Court noted its approval of the Landay definition of abandonment.

Applying that definition to the instant case, I must conclude that there has been no abandonment. The facts presented disclose no intention of the property owners to abandon or relinquish the use of this premises as a two apartment complex. In fact, by their continued occupancy of only the first floor, it seems clear that they intended to retain the two family character of the dwelling. Also, there has been no overt act or failure to act which would reflect an abandonment. There has been no physical renovation of the structure or attempted conversion of same to a single family dwelling, or other use. Although it is arguable that failure to retain a tenant might constitute a failure to act, I do not find that fact sufficient to justify the finding of an abandonment.

Having, therefore, satisfied the first two tests, the Petitioner must now address the final prong offered by Section 104.1 of the B.C.Z.R. That is, has their been a discontinuance of the use.

Although the term "discontinuance" within Webster's Third New International Dictionary can be construed to mean abandonment, I do not believe that the Council intended that word to be so defined in Section 104.1. If that were their intent, the regulations would be unnecessarily repetitious. Rather, use of the phrase, "abandonment or discontinuance", suggests that the Council intended that there be two different litmus tests in order for a nonconforming use to be permitted. Further, Webster also defines discontinuance as to break off, give up, or end operations. That is, discontinuance can be defined as when the use has ceased, notwithstanding the owner's intent. In applying this broader definition to the facts presented, it is abundantly clear that the use has been discontinued in this case. Notwithstanding the

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fact that there has been no abandonment as that term is defined at law, it is equally apparent that the property owner/Petitioners have discontinued the use of this dwelling as a two apartment complex. They have made no effort to secure tenants for a lengthy period. Certainly, for an apartment use to exist, there must be a landlord and tenant relationship and lease; conditions which are unfulfilled in the instant case. Under these circumstances, it must follow that the Petitioners have not met their burden and the Petition must, therefore, be denied.

Pursuant to the advertisement, posting of the property, and public hearing on this Petition held, and for the reasons given above, the Petition for Special Hearing should be denied.

THEREFORE, IT IS ORDERED by the Zoning Commissioner of Baltimore County this 19th day of February 1992 that, pursuant to the Petition for Special Hearing, approval of a nonconforming use for two apartments at that property known as 507 Murdock Road, be and is hereby DENIED.

LAWRENCE E. SCHMIDT
Zoning Commissioner for
Baltimore County

LES:mmn

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Suite 113, Courthouse
400 Washington Avenue
Towson, MD 21204

(410) 887-4386

February 18, 1992

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Towson, Maryland 21204

RE: Petition for Special Hearing
Case No. 92-211-SPH
John H. Tumminello, et ux, Petitioners

Gentlemen:

Enclosed please find the decision rendered in the above captioned case. The Petition for Special Hearing has been denied, in accordance with the attached Order.

In the event the decision rendered is unfavorable to any party, please be advised that any party may file an appeal within thirty (30) days of the date of the Order to the County Board of Appeals. If you require additional information concerning filing an appeal, please feel free to contact our Appeals Clerk at 887-3391.

Very truly yours,
Lawrence E. Schmidt
Zoning Commissioner
for Baltimore County

LES:mmn
att.
cc: Gerard P. Uehlinger, Esquire
cc: Phyllis Friedman, Esquire

Petition for Special Hearing

to the Zoning Commissioner of Baltimore County

The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Special Hearing under Section 500.7 of the Baltimore County Zoning Regulations, to determine whether or not the Zoning Commissioner and/or Deputy Zoning Commissioner should approve Non-conforming use for two (2) apartments at 507 Murdock Road

Property is to be posted and advertised as prescribed by Zoning Regulations.

I, or we, agree to pay expenses of the above Special Hearing advertising, posting, etc., upon filing of this Petition, and further agree to and are to be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law for Baltimore County.

I/We do solemnly declare and affirm, under the penalties of perjury, that I/we are the legal owner(s) of the property which is the subject of this Petition.

Contract Purchaser/Lessee:

(Type or Print Name)

Signature

Address

City and State

Attorney for Petitioner:

(Type or Print Name)

Signature

Address

City and State

Attorney's Telephone No.:

Legal Owner(s):

(Type or Print Name)

Signature

Address

City and State

Name, address and phone number of legal owner, contract purchaser or representative to be contacted

(Type or Print Name)

Signature

Address

City and State

Attorney's Telephone No.:

OFFICE USE ONLY
ESTIMATED LENGTH OF HEARING (1/2HR) + 1HR.
AVAILABLE FOR HEARING
MON./TUES./WED. - NEXT TWO MONTHS
ALL OTHERS
REVIEWED BY: DATE: 2/18/92

FRANK S. LEE
Registered Land Surveyor

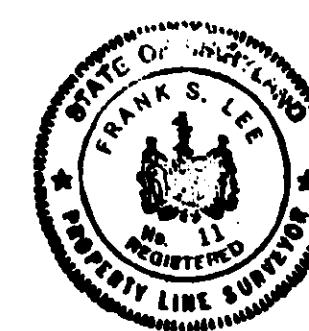
1277 NEIGHBORS AVE. - BALTIMORE, MD. 21237

July 18, 1991

No. 507 Murdock Road
9th District Baltimore County, Maryland

Beginning for the same on the south side of Murdock Road at the distance of 154.44 feet measured easterly along the south side thereof from the east side of Locust Drive, thence running and binding on the south side of Murdock Road South 71 degrees 59 minutes East 50 feet, thence running for three lines of division as follows: South 18 degrees 01 minutes West 125 feet, North 71 degrees 59 minutes West 50 feet and North 18 degrees 01 minute East 125 feet to the place of beginning.

Containing 6250 square feet of land more or less.



CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

District: 9th
Date of Posting: 11/25/91
Posted for: Special Hearing
Petitioner: John H. Tumminello, et ux
Location of property: 5/8 Murdock Rd., 175' E of Locust Dr.
507 Murdock Rd.
Location of Sign: Along Murdock Rd. Area 23' E of Locust Dr.
On property of Baltimore
Remarks: _____
Posted by: [Signature]
Date of return: 11/28/91
Number of Signs: 1

CERTIFICATE OF PUBLICATION

TOWSON, MD., Nov 29, 1991
THIS IS TO CERTIFY, that the annexed advertisement was published in THE JEFFERSONIAN, a weekly newspaper published in Towson, Baltimore County, Md., once in each of 1 successive weeks, the first publication appearing on Nov 28, 1991.

THE JEFFERSONIAN,

S. Zeke Online
Publisher

CERTIFICATE OF PUBLICATION

TOWSON, MD., Nov 29, 1991
THIS IS TO CERTIFY, that the annexed advertisement was published in TOWSON TIMES, a weekly newspaper published in Towson, Baltimore County, Md., once in each of 1 successive weeks, the first publication appearing on Nov 28, 1991.

TOWSON TIMES,

S. Zeke Online
Publisher

Baltimore County Zoning Commissioner
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204

Account: R-001-6150
Number: _____
Date: _____

RECEIPT

DATE: 12-5-91

John and Marion Tumminello
507 Murdock Road
Baltimore, Maryland 21212

RE:
CASE NUMBER: 92-211-SPH
5/8 Murdock Road, 175' E of c/l Locust Drive
507 Murdock Road
9th Election District - 4th Councilmanic
Petitioner(s): John H. Tumminello, et ux

Dear Petitioner(s):

Please be advised that \$ 115.69 is due for advertising and posting of the above captioned property.

THIS FEE MUST BE PAID AND THE ZONING SIGN & POST SET(S) RETURNED ON THE DAY OF THE HEARING OR THE ORDER SHALL NOT ISSUE. DO NOT REMOVE THE SIGN & POST SET(S) FROM THE PROPERTY UNTIL THE DAY OF THE HEARING.

Please forward your check via return mail to the Zoning Office, County Office Building, 111 W. Chesapeake Avenue, Room 113, Towson, Maryland 21204. It should have your case number noted thereon and be made payable to Baltimore County, Maryland. In order to prevent delay of the issuance of proper credit and/or your Order, immediate attention to this matter is suggested.

04A04W030M1CHRC \$35.00
BA C003:25PM11-01-91
Please Make Checks Payable To: Baltimore County

Baltimore County Zoning Commissioner
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204

Account: R-001-6150
Number: _____
Date: _____

RECEIPT

DATE: 12-21-91

04A04W030M1CHRC \$103.67
BA C011:56AM12-13-91
Please Make Checks Payable To: Baltimore County

Baltimore County Government
Office of Zoning Administration
and Development Management
Office of Planning & Zoning

111 West Chesapeake Avenue
Towson, MD 21204

887-3353

DATE: 12-5-91

John and Marion Tumminello
507 Murdock Road
Baltimore, Maryland 21212

RE:
CASE NUMBER: 92-211-SPH
5/8 Murdock Road, 175' E of c/l Locust Drive
507 Murdock Road
9th Election District - 4th Councilmanic
Petitioner(s): John H. Tumminello, et ux

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Carl John
ARNOLD JABLON
DIRECTOR
cc: S. Eric Dillmore, Esq.

111 West Chesapeake Avenue
Towson, MD 21204

887-3353

NOTICE OF HEARING

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County will hold a public hearing on the property identified herein in Room 106 of the County Office Building, located at 111 W. Chesapeake Avenue in Towson, Maryland 21204 as follows:

CASE NUMBER: 92-211-SPH
5/8 Murdock Road, 175' E of c/l Locust Drive
507 Murdock Road
9th Election District - 4th Councilmanic
Petitioner(s): John H. Tumminello, et ux
HEARING: FRIDAY, DECEMBER 13, 1991 at 10:15 a.m.

Special Hearing to approve the non-conforming use for two apartments.

Lawrence E. Schmidt
Lawrence E. Schmidt
Zoning Commissioner of
Baltimore County

cc: John Tumminello, et ux
S. Eric Dillmore, Esq.

111 West Chesapeake Avenue
Towson, MD 21204

887-3353

NOTICE OF POSTPONEMENT

CASE NUMBER: 92-211-SPH
PETITIONER(S): John Tumminello, et ux
LOCATION: 507 Murdock Road

THE ABOVE MATTER, PREVIOUSLY ASSIGNED TO HEARD ON DECEMBER 13, 1991, HAS BEEN POSTPONED AT THE REQUEST OF GEORGE A. BRESCHI, ESQ.

NOTIFICATION OF THE NEW HEARING DATE WILL BE FORWARDED SHORTLY.

Carl John
Arnold Jablon
Director

cc: John Tumminello, et ux
George A. Breschi, Esq.

Disregard - Case
will proceed as scheduled
on 12-13-91.

111 West Chesapeake Avenue
Towson, MD 21204

(410) 887-3353

George A. Breschi, Esquire
409 Washington Avenue, #600
Towson, MD 21204

RE: Item No. 221, Case No. 91-211-SPH
Petitioner: John H. Tumminello, et ux
Petition for Special Hearing

Dear Mr. Breschi:

The Zoning Plans Advisory Committee (ZAC) has reviewed the plans submitted with the above referenced petition. The attached comments from each reviewing agency are not intended to assure that all parties, i.e. Zoning Commissioner, attorney and/or the petitioner, are made aware of plans or problems with regard to the proposed improvements that may have a bearing on this case.

Enclosed are all comments submitted thus far from the members of ZAC that offer or request information on your petition. If additional comments are received from other members of ZAC, I will forward them to you. Otherwise, any comment that is not informative will be placed in the hearing file. This petition was accepted for filing on the date of the enclosed filing certificate and a hearing scheduled accordingly.

The following comments are related only to the filing of future zoning petitions and are aimed at expediting the petition filing process with this office.

1) The Director of Zoning Administration and Development Management has instituted a system whereby seasoned zoning attorneys who feel that they are capable of filing petitions that comply with all aspects of the zoning regulations and petitions filing requirements can file their petitions with this office without the necessity of a review by Zoning personnel.

Zoning Plans Advisory Committee Comments
Date: December 6, 1991
Page 2

2) Anyone using this system should be fully aware that they are responsible for the accuracy and completeness of any such petition. All petitions filed in this manner will be reviewed and commented on by Zoning personnel prior to the hearing. In the event that the petition has not been filed correctly, there is always a possibility that another hearing will be required or the Zoning Commissioner will deny the petition due to errors or incompleteness.

3) Attorneys and/or engineers who make appointments to file petitions on a regular basis and fail to keep the appointment without a 72 hour notice will be required to submit the appropriate filing fee at the time future appointments are made. Failure to keep these appointments without proper advance notice, i.e. 72 hours, will result in the loss of filing fee.

Very truly yours,
James E. Dyer
JAMES E. DYER
Chairman
Zoning Plans Advisory Committee

JED:jw
Enclosures
cc: Mr. & Mrs. John H. Tumminello
507 Murdock Road
Baltimore, MD 21212

Baltimore County Government
Office of Zoning Administration
and Development Management
Office of Planning & Zoning
(410) 887-3353

Chesapeake Avenue
MD 21204

Your petition has been received and accepted for filing this
1st day of November, 1991.

Arnold Jablon
ARNOLD JABLON
DIRECTOR

Received By:
James E. [Signature]
Chairman,
Zoning Plans Advisory Committee

Petitioner: John M. Tumminello, et ux
Petitioner's Attorney: George A. Breschi

BALTIMORE COUNTY, MARYLAND
INTER-OFFICE CORRESPONDENCE

TO: Arnold Jablon, Director
Zoning Administration and
Development Management

FROM: Pat Keller, Deputy Director
Office of Planning and Zoning

SUBJECT: Tumminello Property, Item No. 221

DATE: November 25, 1991

In reference to the Petitioner's request, staff offers no
comments.

If there should be any further questions or if this office can
provide additional information, please contact Jeffrey Long in the
Office of Planning at 887-3211.

PK/JL/rdn
ITEM221/TXTROZ

BUREAU OF TRAFFIC ENGINEERING
DEPARTMENT OF PUBLIC WORKS
BALTIMORE COUNTY, MARYLAND

DATE: November 27, 1991

TO: Mr. Arnold Jablon, Director
Office of Zoning Administration
and Development Management

FROM: Rahee J. Fanni
Traffic Engineer II

SUBJECT: Z.A.C. Comments

T.A.C. MEETING DATE: November 12, 1991

ITEM NUMBER: 221

Adequate off-street parking should be provided.

Rahee J. Fanni
Rahee J. Fanni
Traffic Engineer II

RJF/lvd

Baltimore County Government
Fire Department
700 East Joppa Road, Suite 901
Towson, MD 21204-5500
(301) 887-4500

NOVEMBER 26, 1991

Arnold Jablon
Director
Zoning Administration and
Development Management
Baltimore County Office Building
Towson, MD 21204

RE: Property Owner: JOHN H. TUMMINELLO
Location: #507 MURDOCK ROAD
Item No.: 221 Zoning Agenda: NOVEMBER 12, 1991

Gentlemen:

Pursuant to your request, the referenced property has been surveyed by
this Bureau and the comments below are applicable and required to be
corrected or incorporated into the final plans for the property.

5. The buildings and structures existing or proposed on the site
shall comply with all applicable requirements of the National Fire
Protection Association Standard No. 101 "Life Safety Code", 1988
edition prior to occupancy.

REVIEWER: *[Signature]* Noted and
Planning Group Approved: *[Signature]*
Special Inspection Division Fire Prevention Bureau

JP/KEK

BALTIMORE COUNTY, MARYLAND
INTER-OFFICE CORRESPONDENCE

TO: Arnold Jablon, Director
Zoning Administration and Development Management

FROM: Robert W. Bowling, P.E.

RE: Zoning Advisory Committee Meeting
for November 12, 1991

DATE: November 13, 1991

The Developers Engineering Division has reviewed
the subject zoning items and we have no comments for
Items 210, 212, 213, 214, 219, 220, and 221.

For Items 215, 217 and 218, the previous County
Review Group Meeting comments remain applicable to
these properties.

Robert W. Bowling
ROBERT W. BOWLING, P.E., Chief
Developers Engineering Division

RWB:s

IMPORTANT
FIRST B. Co ZONING
REGULATIONS

ZONING REGULATIONS AND RESTRICTIONS

FOR
BALTIMORE COUNTY

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Comments are attached

LAW OFFICE OF
GERARD P. UEHLINGER
THE HUNTER BUILDING, SUITE 1001
7 NORTH CALVERT STREET
BALTIMORE, MARYLAND 21208-1938
TELEPHONE 410 538-0028
FAX 410 752-8831

January 23, 1992

Zoning Commissioner Lawrence Schmidt
400 Washington Avenue, Room 113
Towson, MD 21204

Re: Mr. & Mrs. John N. Tumminello
507 Murdock Road
Petition for Non-Conforming Use
Case No.: 91-211-SPH

Dear Commissioner Schmidt:

Enclosed for your review is Protestant's Memorandum
of Law in Opposition to Petition for Non-Conforming Use,
etc.

Thank you for your attention.

Very truly yours,
Gerard P. Uehlinger
Gerard P. Uehlinger

GPU/s
Encls.

cc: Mr. Chris Moore
Mr. Jim Dobson
Mr. Dick Katz
Newton A. Williams, Esq.
Phyllis Friedman, Esq.

Petitioner's Sign In

Name	Address
Newton A. Williams	700 Chestnut Tower 21204
Frank X. Bryndung	600 Merimont Tower 21204
John H. Tumminello	507 Murdock Rd. 21212
Myron M. Drummond	507 Murdock Rd. 21212
Clare E. Johnson	6908 Maplewood Rd. 21212
Muriel E. Buddenweiser	628 Murdock Rd. 21212
Bob Poffell (Ruth)	6910 Calvert Rd. 21212
Mary Brock (daughter)	3100 Falls Rd. 21079

Protestants Sign In

Name	Address
Jim Dobson	510 MURDOCK RD. BALTO. 21212
GERARD UEHLINGER ATTY FOR ANNEHUE COMMUNITY ASSN	7 N. CALVERT ST SUITE 1001 BALTO. 21202
RICHARD KATZ	508 MURDOCK RD BALTO. 21212

EX. ZONING - R-2
EX. USE - 2 APARTMENT DWG
AREA OF LOT - 10,750 SQ. FT.
EXISTING PUBLIC UTILITIES & SEWER
DEED REF. - REC 100-1-100
COINTEGRATED DIST. - 1

OWNER
JOHN TUMMINELLO
507 MURDOCK RD
TOWSON, MD. 21204

92-211-SPH

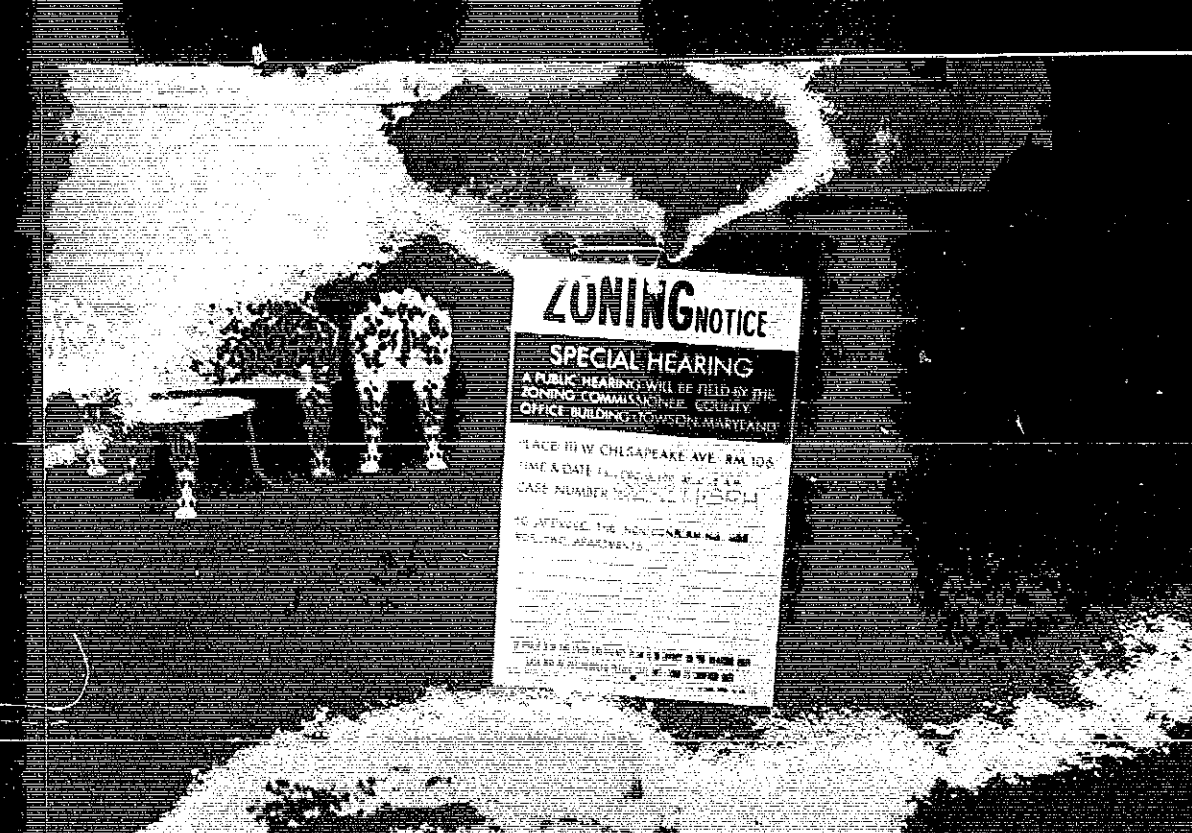
PLAT TO ACCOMPANY PETITION FOR A NON CONFORMING USE FOR 2 APT.

LOTS 1-3 BLOCK F
ANNESLIE
PLAT BOOK 7-40
9TH DISTRICT BALTIMORE CO, MARYLAND
SCALE 1" = 20' DATE 7-18-91

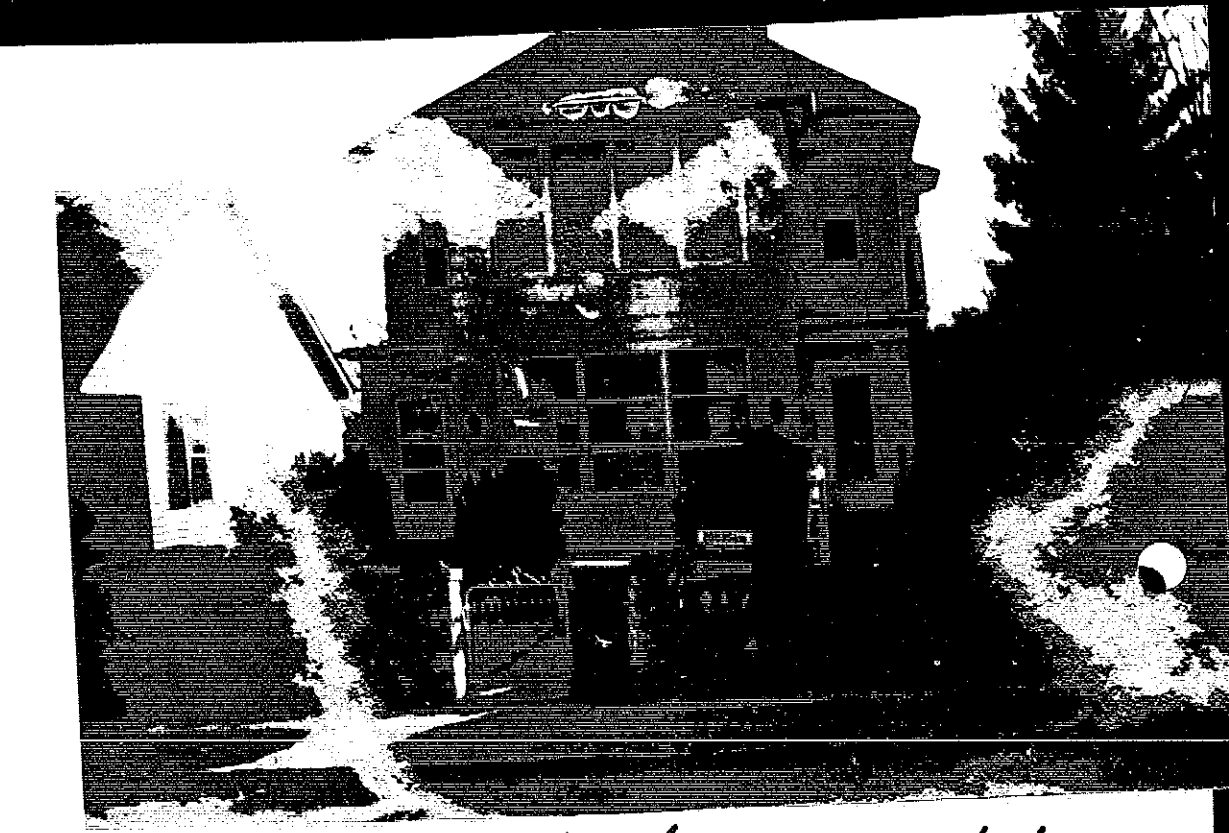
#221

FRANK S. LEE
1274 NORTHERN AVE
BALTIMORE, MD. 21237
687-6922

**PETITIONER'S
EXHIBIT No 1**



A. Zoning sign for case in yard.



B. 507 Murdock Rd., S/S Murdock
E of York Rd.
Tumminello Property
Case No 92-211-SPH
507 Murdock Rd.

**PETITIONER'S
EXHIBIT 2**



C. Looking E on sidewalk
from 507 Murdock Rd.



D. Looking W on Murdock to York Rd.

**PETITIONER'S
EXHIBIT 2**

Owner/Client: Tumminello Marion & John
Address: 507 Murdock Road
City: Towson County: Baltimore State: MD Zip Code: 21212
Lender/Client: Mercantile Mortgage Corporation

EXTERIOR BLDG SKETCH and LOCATION

LEVEL 1: STAIRS, ENTRY, BEDRM, BATH, DINING RM, KITCHEN, CLOUSE RM, SHOWER, DECK.

LEVEL 2: STAIRS, BEDRM, BATH, DINING ROOM, CLOUSE ROOM.

NOT TO SCALE

20' Porch

LOCATION MAP (*SUBJECT PROPERTY)

Map showing the location of the property on Murdock Road, near York Road, with surrounding streets and landmarks.



E. House on opposite side of
Murdock Rd.



F. House on opposite side of Murdock
Rd. from 507

**PETITIONER'S
EXHIBIT 2**



G. 2-family house on E/S of 507
Murdock Rd.



H. House to E of 507 Murdock Rd.

**PETITIONER'S
EXHIBIT 2**

John H. & Marion M. Tumminello
507 Murdock Road
Baltimore, Maryland 21212

DEED INFORMATION FOR:
507

5/23/22	Charles W. Mulligan and Wife to: Charles S. Steffey
12/1/27	Charles S. Steffey to: Mary G. and John U. Lemmon

**INFORMATION FROM ASSESSMENT DEPT. - YELLOW BRICK ROAD -
NOT LISTED ON OUR DEED:**

1942	Mary G. Lemmon to: John A. and Evelyn Diven
1/3/55	
5/5/55	
1956	Francis Lowe
9/16/63	Lola M. Carpenter, Mother- from Estate of her daughter, Rosalee Lowe, to: John H. & Marion M. Tumminello

Not No 4

ZONING MAP OF BALTIMORE COUNTY MARYLAND

REPRODUCTION OF THE USE DISTRICT MAPS
PART OF THE
ZONING REGULATIONS AND RESTRICTIONS
Prepared by The Zoning Department
SEPTEMBER 1, 1947

LEGEND

- A—Residence Zone
- B—Residence Zone
- C—Residence Zone
- D—Residence Zone
- E—Commercial Zone
- F—Light Industrial Zone
- G—Heavy Industrial Zone
- District Boundary Lines

N. B. This is a diagrammatic reproduction. For exact location of boundaries of zones, consult the Official Maps in the Office of the Zoning Commissioner, Towson, Maryland.

ON A BASE FURNISHED BY
THE MARYLAND GEOLOGICAL SURVEY
IN COOPERATION WITH
THE UNITED STATES GEOLOGICAL SURVEY

Scale 42500
Contour Interval 20 feet
Datum of mean sea level

